

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 98-4745**

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

JUAN OLIVAREZ, a/k/a Jay Jay, a/k/a Juan  
Ramirez, a/k/a Luis Rodriguez, a/k/a Yenny L.  
Ortega,

Defendant - Appellant.

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Appeal from the United States District Court for the Eastern Dis-  
trict of Virginia, at Richmond. James R. Spencer, District Judge.  
(CR-98-53)

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Submitted: April 20, 1999

Decided: May 13, 1999

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Before LUTTIG and MOTZ, Circuit Judges, and HALL, Senior Circuit  
Judge.

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Affirmed by unpublished per curiam opinion.

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John B. Mann, LEVIT & MANN, Richmond, Virginia, for Appellant.  
Helen F. Fahey, United States Attorney, S. David Schiller, Assis-  
tant United States Attorney, Richmond, Virginia, for Appellee.

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Unpublished opinions are not binding precedent in this circuit.  
See Local Rule 36(c).

PER CURIAM:

Juan Olivarez pled guilty pursuant to a plea agreement to possession of a firearm by a felon in violation of 18 U.S.C. §§ 2, 922(g)(1) (1994). He now challenges his sentence of forty-four months' imprisonment. Olivarez disputes the two-point enhancement of his offense level under the Sentencing Guidelines for committing the instant offense while under a criminal justice sentence. See U.S. Sentencing Guidelines Manual § 4A1.1(d) (1997). Olivarez was previously convicted of petit larceny\* based upon the theft of two disposable cameras from a Food Lion store. While acknowledging that the judgment form for the petit larceny conviction states that Olivarez received a one-year term of probation, Olivarez argues that he was not actually sentenced to probation for purposes of USSG § 4A1.1(d) because the only condition of the "probation" was that Olivarez not enter any Food Lion store.

We review the sentencing court's findings of fact for clear error and the court's application of the Guidelines to the facts with deference. See United States v. Cutler, 36 F.3d 406, 407 (4th Cir. 1994). Because we find no error in the court's determination that Olivarez was sentenced to probation for the purposes of USSG § 4A1.1(d), we affirm his sentence.

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\* See Va. Code Ann. § 18.2-96 (Michie 1996).

We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED